



CRP..No.1560 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1560 of 2024 and C.M.P.No.8386 of 2024

P.Sakthivel

..Petitioner

Vs.

1.Govindappa Gounder @ Govindasamy Gounder
@ Govinda Gounder

2.P.Thangavel

.. Respondents

Prayer:- Civil Revision Petition filed under Section 115 of CPC to set aside the judgment and decree in O.S.No.271 of 2008 dated 08.09.2010 on the file of the Principal District Munsif, Coimbatore.

For Petitioner : Mr.Mukunth, Senior Counsel
for M/s.Sarvabhauman Associates

For Respondents : No appearance

ORDER

This petition has been filed as against the judgment and decree in O.S.No.271 of 2008 dated 08.09.2010 on the file of the Principal District Munsif, Coimbatore.



CRP..No.1560 of 2024

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2. The petitioner, who is the first defendant in the suit in O.S.No.271 of 2008 has challenged the exparte decree and judgment dated dated 08.09.2010 on the file of Principal District Munsif, Coimbatore. The suit in O.S.No.271 of 2008 is filed by the first respondent/plaintiff herein seeking for damages for a sum of Rs.45,000/- for cutting 9 fully grown palmyra tree and subsequently fragmented into several parts which are situated on the southern end of the suit property and for a permanent injunction restraining the defendants from in anyway removing the cut down trees fragmented into several pieces, which are lying on the southern side of the suit property and also for a permanent injunction restraining the defendants from in anyway obstructing the plaintiff from putting a pucca barbed wire fence around the suit property. The petitioner was set exparte and the impugned judgment and decree came to be delivered on 08.09.2010. Challenging the same, the present revision petition is filed.

3. Mr.Mukunth, learned senior counsel for the petitioner submitted that the Trial Court has passed a cryptic and unreasoned judgment in granting the exparte decree in favour of the plaintiff/first respondent. He would further submit that Judgment and decree passed in the present suit does not confirm with the requirements as required under Order XX Rule 4



CRP..No.1560 of 2024

WEB COPY

of CPC and it also does not reflect the issues involved in the suit. Thereby seeks to set aside the judgment and decree dated 08.09.2010 passed in O.S.No.271 of 2008.

4. In support of his contentions, he relied upon the judgments of this Court in the case of *Meenakshisundaram Textiles vs. Valliammal Textiles Ltd* reported in 2011 (3) CTC 168 and the judgment of the Hon'ble Apex Court in the case of *Robin Thopa v. Rohit Dora* reported in (2019) 7 SCC 359 .

5. This Court by Order dated 16.04.2024 has issued notice to the respondents and private notice was also permitted. Despite service of notice on the respondents and affidavit of service being filed, none appeared for the respondents. Therefore, this Court directed the Registry to print the names of the respondents. Despite the same, there is no representation for the respondents even today.

6. Heard the learned senior counsel for the petitioner and perused the materials placed on record.

7. The petitioner is the first defendant in the suit filed by the first respondent/plaintiff for damages and permanent injunction in respect of the



CRP..No.1560 of 2024

suit schedule property. On receipt of the suit summons, the defendants failed to appear before the Court below and they were set exparte. On 08.09.2010, the exparte decree was passed in O.S.No.271 of 2008.

8. It is relevant to extract the Judgment dated 08.09.2010 passed in O.S.No.271 of 2008 which reads as follows:-

Judgment

Suit for directing the defendants to pay to the plaintiff a sum of Rs.45,000/- towards damages for cutting 9 fully grown palmyra tree and subsequently fragmented into several parts which are situated on the southern end of the suit property. (b) for a permanent injunction restraining the defendants their men, and agents and servants etc., from in anyway removing the cut down trees fragmented into several pieces, which are lying on the southern side of the suit property.(c) For pertaining injunction restraining the defendants their mane, and agents servants etc., from in any way obstructing the plaintiff from putting a pucca barbed wire fence around the suit property; and for cost of the suit.

Clarification Heard. Based on Proof Affidavit. Claim is proved. Suit is decreed as prayed for with Cost.

Pronounced by me in the open court, this the 8th day of September 2010."

9. The judgment dated 08.09.2010 does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue.



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10.A Division Bench of this Court in the case of *Meenakshisundaram Textiles vs. Valliammal Textiles Ltd* reported in 2011 (3) CTC 168 has held as follows:

“ 16. Code of Civil Procedure does not define either an ex parte judgment or an ex parte decree. It refers only to a judgment and a decree. In the event a judgment is rendered when the defendant fails to defend the suit by his absence, that judgment is known to be an ex parte judgment and the decree drawn on the basis of that judgment is known as an ex parte decree. Hence, even for an ex parte judgment and the decree, the basic ingredients of judgment must be available to the extent to indicate that the Court has applied its mind to the pleading, relief claimed thereunder, the evidence and the conclusion arrived at by the Court on the above.

17. Section 2(2) of the Civil Procedure Code defines a "decree" as follows:

"2(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation - A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;

In order to bring a decree within the provisions of Section 2(2), the following essential elements are necessary. There must be a suit, as such a decree could be given only in relation to a suit. There must be an adjudication of the



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dispute. Adjudication means the judicial determination of the matter in dispute. Adjudication, in other words, also would mean that the Court must have applied its mind to the facts of the case to resolve the matter in dispute. Such adjudication must be about any or all the matters in controversy in the suit. After adjudication, there must be a conclusive determination of the rights of the parties. Finally, in order to pass a decree, the Court must formally express its decision in the manner provided by law. In this regard, the provisions of Section 33 of Civil Procedure Code are also relevant to be kept in mind. That provision states that the decree shall follow on the basis of the judgment pronounced.

...

21. From the above discussions, it is manifestly clear that even a judgment rendered ex parte and a decree is drawn on the basis of that judgment, it is appealable. In case that judgment and decree become final without there being any appeal, the decree is executable. In that sense, there is no difference between a judgment and decree and an ex parte judgment and decree. In view of the above, in the event the defendant is set ex parte, the Court should be extra careful in such case and it should consider the pleadings and evidence and arrive at a finding as to whether the plaintiff has made out a case for a decree. In this context, it may also be mentioned that though a detailed judgment is required in a contested matter, an ex parte judgment should show the application of the minimum requirement of consideration of the pleadings, issues, evidence and the relief sought for rendering such judgment.”

11. The Hon'ble Supreme Court in the case of *Robin Thopa v. Rohit*

Dora reported in (2019) 7 SCC 359 as held as under:

“8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not



CRP..No.1560 of 2024

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be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

12. The Order XX Rule 4 CPC would clearly state that the judgement of the Court shall contain a concise statement of the case, the points for determination, the decision there on and the reasons for such decision. Therefore, the judgment passed by the Court below does not conform with these requirements as provided under Order XX Rule 4 CPC and does not reflect the issues involved in the present case. The judgment passed by the Court below is cryptic, without following the procedure as contemplated under Section 2(9) of CPC.

13. This Court is aware that the revision petitioner has filed this petition with an enormous delay. However, taking into consideration of the fact that the prayer in the suit is seeking for damages in respect of cutting the trees, which, this Court feels that necessary evidence has to be let in and this Court is of the considered opinion that the suit has to be decided on its merits and in accordance with law by giving sufficient opportunity to the petitioner and however this Court is inclined to compensate with cost for the inconvenience caused to the first respondent.



CRP..No.1560 of 2024

WEB COPY

14. In view of the above, the judgment and decree dated 08.09.2010 made in O.S.No.271 of 20018 by the learned Principal District Munsif, Coimbatore is hereby set aside, on condition that the petitioner shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) before the learned Principal District Munsif, Coimbatore as cost to the first respondent, within a period of two weeks from the date of receipt of a copy of this order. On such payment, the Trial Court is directed to take up the suit on file, issue notice to the plaintiff and proceed with the suit, on merits and in accordance with law and dispose of the same, within a period of six months thereafter.

15. Accordingly, the C.R.P.No.1560 of 2024 is allowed. No costs. Consequently, connected miscellaneous petition is closed. No costs.

02.09.2024

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Internet : Yes/No

Index : Yes/No

To,

The Principal District Munsif,
Coimbatore.



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CRP..No.1560 of 2024

A.D.JAGADISH CHANDIRA, J.,

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CRP..No.1560 of 2024

C.R.P.No. 1560 of 2024

02.09.2024